

No. 2466

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, a Corporation,
Plaintiff in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Southern District of California,
Southern Division.

Filed

SEP 2 - 1914

F. D. Monckton,
Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, a Corporation,
Plaintiff in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Southern District of California,
Southern Division.

THE HISTORY OF THE
CITY OF BOSTON

FROM 1630 TO 1830

BY
JOHN H. COLEMAN

IN TWO VOLUMES.

BOSTON: PUBLISHED BY
J. B. LEECH, 15 NASSAU ST.

NEW-YORK.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

For Plaintiff in Error:

PAUL BURKS, Esq., and E. W. CAMP, Esq.,
409 Kerckhoff Building, Los Angeles, California.

For Defendants in Error:

ALBERT SCHOONOVER, Esq., U. S. Attorney, Los Angeles, California;

HARRY R. ARCHBALD, Esq., Assistant U. S. Attorney, Los Angeles, California; and

MONROE C. LIST, Esq., Special Assistant to the U. S. Attorney, c/o Interstate Commerce Commission, Washington, D. C.

[3*]

In the District Court of the United States of America, Southern District of California, Southern Division.

No. 244—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

Defendant.

*Page number appearing at foot of page of original certified Record.

Writ of Error [Original].

UNITED STATES OF AMERICA,—ss.

The President of the United States, to the Hon.
OLIN WELLBORN, Judge of the United
States District Court for the Southern District
of California, Southern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, between The Atchison, Topeka and Santa Fe Railway Company, plaintiff in error, and the United States of America, defendant in error, a manifest error hath happened, to the damage of The Atchison, Topeka and Santa Fe Railway Company, plaintiff in error, as by said complaint appears, and we being willing that error, if any hath been, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, in the State of California, where [4] said court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right and according to the laws and customs of the United States should be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, this 24th day of July, 1914.

[Seal] WM. M. VAN DYKE,
Clerk of the United States District Court for the
Southern District of California, Southern Division.

By Chas. N. Williams,
Deputy Clerk.

Allowed this 24th day of July, 1914.

OLIN WELLBORN,
United States Judge. [5]

I hereby certify that a copy of the within Writ was on the 24th day of July, 1914, lodged in the Clerk's Office of the said United States District Court for the Southern District of California, Southern Division, for the said defendant in error.

WM. M. VAN DYKE,
Clerk United States District Court, Southern District of California.

By Chas. N. Williams,
Deputy Clerk.

[Endorsed]: No. 244—Civil. Original. Dept. —. In the District Court of the United States, Sou. Dist. of Cal., Sou. Divn. United States of America, Plaintiff, vs. The Atchison, Topeka and Santa Fe Railway Co., Defendant. Writ of Error. Filed Jul. 24, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

4 *The Atchison, Topeka & Santa Fe Ry. Co.*

Received copy of the within Writ of Error this
24th day of July, 1914.

ALBERT SCHOONOVER,
Attorney for Plaintiff. [6]

*In the District Court of the United States of Amer-
ica, Southern District of California, Southern
Division.*

No. 244—CIVIL.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,
Defendant.

Citation [on Writ of Error (Original)].

United States of America, to the United States of
America, Defendant in Error, Greeting:

You are hereby cited and admonished to be and
appear in the United States Circuit Court of Appeals
for the Ninth Circuit, at the city of San Francisco,
State of California, thirty days from and after the
day this citation bears date, pursuant to Writ of
Error filed in the clerk's office of the United States
District Court for the Southern District of Califor-
nia, Southern Division, sitting at Los Angeles,
wherein The Atchison, Topeka and Santa Fe Rail-
way Company is plaintiff in error, and you are de-
fendant in error, to show cause, if any there be, why
the judgment rendered against the said plaintiff in
error as in said Writ of Error mentioned should not

be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS the Hon. OLIN WELLBORN, Judge of the United States District Court, this 24th day of July, 1914.

OLIN WELLBORN,
U. S. District Judge. [7]

[Endorsed]: No. 244—Civil. Original. Dept. ——. In the District Court of the United States, Sou. Dist. of Cal., Sou. Divn. United States of America, Plaintiff, vs. The Atchison, Topeka and Santa Fe Railway Co., Defendant. Citation. Filed Jul. 24, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [8]

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

No. 244—CIVIL.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAIL-
WAY COMPANY, a Corporation,
Defendant. [9]

[**Complaint.**]

*In the District Court of the United States for the
Southern District of California, ——— Division.*

1819.

No. ———.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY,
Defendant.

Now comes the United States of America, by Aloysius I. McCormick, United States Attorney for the Southern District of California, and brings this action on behalf of the United States against the Atchison, Topeka & Santa Fe Railway Company, a corporation organized and doing business under the laws of the State of Kansas, and having an office and place of business at Los Angeles, in the State of California; this action being brought upon suggestion of the Attorney General of the United States at the request of the Interstate Commerce Commission, and upon information furnished by said Commission.

[10]

FOR A FIRST CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 10:40 o'clock, P. M., on October 2, 1912, upon its line of railroad at and between the stations of Parker in the State of Arizona and Los Angeles in the State of California within the jurisdiction of this court, required and permitted its certain conductor and employee, to wit: C. D. Plank to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit: from said hour of 10:40 o'clock, P. M. on said date, to the hour of 8:25 o'clock, P. M. on October 3, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train 17 drawn by its own locomotive engine No. 1276, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[11]

FOR A SECOND CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 10:40 o'clock P. M. on October 2, 1912, upon its line of railroad at and between the stations of Parker, in the State of Arizona and Los Angeles in the State of California within the jurisdiction of this court, required and permitted its certain brakeman and employee, to wit: C. L. Elmendorf to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit: from said hour of 10:40 o'clock P. M. on said date, to the hour of 8:25 o'clock, P. M. on October 3, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train 17 drawn by its own locomotive engine No. 1276, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[12]

FOR A THIRD CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 10:40 o'clock P. M. on October 2, 1912, upon its line of railroad at and between the stations of Parker in the State of Arizona, and Los Angeles in the State of California within the jurisdiction of this court, required and permitted its certain brakeman and employee, to wit: W. F. Rossow, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit: from said hour of 10:40 o'clock, P. M., on said date, to the hour of 8:25 o'clock P. M. on October 3, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train 17 drawn by its own locomotive engine No. 1276, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[13]

WHEREFORE, plaintiff prays judgment against said defendant in the sum of fifteen hundred dollars

10 *The Atchison, Topeka & Santa Fe Ry. Co.*
and its costs herein expended.

A. I. McCORMICK,
United States Attorney.
HARRY R. ARCHBALD,
Asst. U. S. Atty.

[Endorsed]: No. 244—Civil. In the District Court of the United States for the Sou. Dist. of California, Southern Division. United States of America, Plaintiff, vs. Atchison, Topeka & Santa Fe Railway Company, Defendant. Complaint. Filed Mar. 7, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [14]

*In the District Court of the United States for the
Southern District of California, Southern Division.*

No. 244—CIVIL.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAIL-
WAY COMPANY,
Defendant.

Answer.

Now comes The Atchison, Topeka and Santa Fe Railway Company, defendant in the above-entitled cause, and in answer to the complaint of the plaintiff in said action respectfully shows:

I.

That it is and was at the times mentioned in said

complaint a common carrier engaged in interstate commerce substantially as alleged in said complaint; that on or about the times mentioned in said complaint it retained in service the certain employees named in said complaint in excess of 16 hours, substantially as stated in said complaint.

II.

And for further answer and defence to said complaint this defendant shows:

That said station of Parker is a terminal of this defendant and the terminal from which said employees [15] were engaged by this defendant to operate and accompany said train to the City of Los Angeles, in the State of California, which is the terminal to which said employees were destined at the time stated in the complaint; that the schedule and usual time of said train in going from said Parker to said Los Angeles is and was at the times mentioned in said complaint much less than 16 hours, to wit, 11 hours and 5 minutes, and that said train would, at the time mentioned in said complaint, have made said run in about 11 hours and 5 minutes, and in much less than 16 hours, but for certain casualties and unavoidable accidents, and for certain causes which could not have been foreseen by and were not known to said defendant, or any of its officers or agents at the time when said crew left said terminal at Parker; that is to say, said train was delayed at certain stations between Cadiz and Barstow by reason of congestion of trains due to certain washouts caused by storm waters shortly before the passage of said train, which washouts had delayed a number

12 *The Atchison, Topeka & Santa Fe Ry. Co.*

of passenger trains on the main line of this defendant, congesting all traffic on said line and causing necessary delay to all trains; but that said delays, aggregating 2 hours and 30 minutes before reaching the station of Barstow would not have caused said crew to exceed the time of 16 hours in reaching said station of Los Angeles.

Said train left Barstow at 7:45 A. M. October 3, and shortly thereafter, at 8:30 A. M., an axle broke under the tank of the engine of said train, whereby said train was delayed 6 hours and 10 minutes, although every [16] effort was made to remedy the accident and proceed at the earliest possible moment; that the breaking of the axle was a casualty and unavoidable accident, and was the result of causes which were not known to this defendant, or any of its officers or agents, when said engine left its terminal, to wit, said station of Barstow, and that said casualty could not have been foreseen when said engine left said Barstow.

WHEREFORE, defendant prays that said action may be dismissed, and that it may have judgment for its costs.

Dated March 29, 1913.

E. W. CAMP,
U. T. CLOTFELTER,
Attorneys for Defendant.

State of California,
County of Los Angeles,—ss.

J. L. Hibbard, being by me first duly sworn, says that he is an officer, namely, the Acting General Manager of the defendant named in the foregoing

Answer; that he has read said Answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and that as to those matters he believes it to be true.

[Seal]

J. L. HIBBARD.

Subscribed and sworn to before me this 29th day of March, A. D. 1913.

J. L. B. HAMILTON,

Notary Public in and for the County of Los Angeles,
State of California. [17]

[Endorsed]: No. 244—Civil. Dept. ——. In the U. S. District Court, Southern Dist. of California, Southern Division. United States, Plaintiff, vs. A. T. & S. F. Ry. Co., Defendant. Answer. Filed Mar. 31, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Received Copy of the within Answer this 31st day of March, 1913. A. I. McCormick, U. S. Atty., by Harry R. Archbald, Asst. U. S. Atty., Attorney for ————. E. W. Camp, A. H. Van Cott, U. T. Clotfelter, M. W. Reed, Paul Burks, 409 Kerekhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant.
[18]

UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California, Southern Division.

No. 244—CIVIL.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAIL-
WAY COMPANY,

Defendant.

Judgment.

This cause having come on regularly on Wednesday, the 17th day of June, 1914, being a day in the January Term, A. D. 1914, of the District Court of the United States for the Southern District of California, Southern Division, to be tried before the Court and a jury to be impanelled; Harry R. Archbald, Esq., Assistant U. S. Attorney, and Monroe C. List, Esq., Special Assistant to the U. S. Attorney General, appearing as counsel for the United States; Paul Burks, Esq., appearing as counsel for the defendant; and a stipulation as to facts having been filed in open court, and it appearing that said stipulation contains an express waiver of the right to trial by jury herein; and said cause having thereupon come on to be tried by the Court, sitting without a jury; and said cause having been argued, on behalf of the Government, by Monroe C. List, Esq., Special Assistant to the U. S. Attorney Gen-

eral, of counsel for the United States, and on behalf of defendant by Paul Burks, Esq., of counsel for defendant, and on behalf of the Government in reply by Monroe C. List, Esq., Special Assistant to the U. S. Attorney General, of counsel for the United States; and said cause having been submitted to the Court for its consideration and decision; and on the 20th day of June, 1914, Findings of Fact and Conclusions [19] of Law having been filed by the Court herein, and the Court having ordered that, in accordance with said Findings of Fact and Conclusions of Law, judgment be entered in favor of the plaintiff and against the defendant on each of the three causes of action set forth in the complaint herein, together with costs of plaintiff incurred herein; and that a penalty of \$100.00 be assessed on each of said causes of action;

NOW, THEREFORE, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that The United States of America, plaintiff herein, have and recover of and from The Atchison, Topeka & Santa Fe Railway Company, defendant herein, Three Hundred Dollars (\$300.00), together with plaintiff's costs herein, taxed at \$36.50.

Judgment entered, June 22, 1914.

WM. M. VAN DYKE,

Clerk.

By Leslie S. Colyer,

Deputy Clerk. [20]

*In the District Court of the United States of
America, Southern District of California,
Southern Division.*

No. 244—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

Defendant.

Bill of Exceptions.

The above-entitled cause came on regularly for trial, on June 17, 1914, before the Honorable OLIN WELLBORN, Judge of the above-entitled court, sitting without a jury, a jury trial having been expressly waived by the parties hereto; Messrs. Albert Schoonover, Harry R. Archbald and Monroe C. List appeared as counsel for plaintiff, and Paul Burks, Esq., appeared as counsel for defendant; and the following proceedings were then had:

The following stipulation as to facts was then read in evidence:

*“In the District Court of the United States of
America, Southern District of California,
Southern Division.*

No. 244—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY, a Corporation,
Defendant.

Stipulation as to Facts.

The parties hereto, by their respective attorneys, for the purpose of facilitating the trial of the above-entitled cause, hereby agree that upon such trial the following facts are stipulated and admitted to be true and that no proof thereof need to be introduced, but that the same shall [21] be accepted upon such trial as agreed facts the same as though written documentary evidence or oral testimony with respect thereto had been duly and regularly introduced upon such trial by witnesses duly sworn and examined; and the calling and swearing of witnesses and the introduction of documentary evidence to prove the facts hereinafter stated is hereby expressly waived.

I.

That The Atchison, Topeka and Santa Fe Railway Company, defendant, is a corporation duly organized and existing under the laws of the State of Kansas, and is and was at the times mentioned in

plaintiff's complaint a common carrier engaged in interstate commerce by rail in the State of California, and having an office and place of business at Los Angeles, California.

II.

That at the times mentioned in the complaint herein the defendant was the owner of and was operating what is known as the Santa Fe Railway System, one of the main lines of which extended from Chicago, in the State of Illinois, to Los Angeles and San Francisco, in the State of California, and in connection with which said defendant operated numerous branches extending from a connection with said main line to various points, one of which said branch lines, known as the Arizona and California branch, extended from Cadiz, California (a point 100 miles east of Barstow), to Parker, Arizona, and thence to Phoenix, Arizona.

III.

That certain of the lines of said Railway System west of Albuquerque, New Mexico, were operated as a Grand Operating Division of said system, constituting what is known as The Atchison, Topeka and Santa Fe Railway Company—Coast [22] Lines, whereas the lines of said system situated south of Ash Fork, Arizona, and east of Parker, Arizona, were operated as a separate and distinct Grand Operating Division, and were known as The Atchison, Topeka and Santa Fe Railway Company—S. F. P. & P. Lines.

IV.

That at the times mentioned in said complaint, and

for some time previous thereto, there was being operated between Los Angeles, California, on said Coast Lines, and Phoenix, Arizona, on said S. F. P. & P. Lines, a certain interstate passenger train known and designated as "Phoenix Express"—the train running from Los Angeles to Phoenix being known as train No. 18 and the train operated from Phoenix to Los Angeles being known as train No. 17, both of which said trains customarily and at the time in question were engaged in transporting United States mail, in a railway mail car which constitutes a part of the regular equipment of said train, interstate express, and interstate passengers and their baggage.

V.

That said train No. 17 customarily and upon the dates in question, and at the times mentioned in plaintiff's complaint, moved from Phoenix, Arizona, to Parker, Arizona, in charge of a certain train and engine crew in the employ of said S. F. P. & P. Lines, and that customarily, and at the times mentioned in said complaint, the train and engine crews in charge of said train were changed at Parker, Arizona, at which point there was attached to said train an engine in charge of an engine crew which customarily, and at the times mentioned in said complaint, ran from Parker, Arizona, to Barstow, California, a distance of 183.5 miles. That customarily, and at the times mentioned in said complaint, the [23] said train No. 17 was at Parker taken in charge of and handled from Parker, Arizona, to Los Angeles, California, a distance of 335.3 miles, by what is known as a "passenger train crew," consisting of

one conductor and two brakemen.

VI.

That at the times mentioned in said complaint, said passenger train crew consisted of conductor C. D. Plank and brakemen C. L. Elmendorf and W. F. Rossow, all three of whom were employees of the Santa Fe Coast Lines of said defendant, mentioned in said complaint.

VII.

That on October 2d and 3d, 1912, said passenger train No. 17, being the train mentioned in the several causes of action in plaintiff's complaint set forth, was operated between Parker, Arizona, and Los Angeles, California, by the employees in said complaint and hereinbefore described, and that said employees were required and permitted to be and remain on duty in connection with the movement of said train from 10:40 o'clock P. M., on October 2d, until 8:25 o'clock P. M., on October 3d, 1912, under the circumstances hereinafter set forth.

VIII.

That the employees mentioned in said complaint were under the rules of the defendant required to, on October 2, 1912, and did, report for duty at Parker, Arizona, at 10:40 o'clock P. M., and at 11:10 o'clock P. M. on October 2, 1912, departed from Parker, Arizona, in charge of said train, which was moved from Parker to Los Angeles as shown by the table hereunto attached, marked Exhibit "A," hereby referred to and made a part hereof, which said Exhibit "A" shows the schedule running time of said train No. 17, the actual running time [24]

on the days in question, the distances between the principal stations through which said train passed, the distance of each of said stations from Parker, and the hours said employees had been on duty at the time of their departure from each of said stations, at all of which there were sidetracks of capacity sufficient to accommodate said train No. 17, and all of which stations were continuously operated as night and day telegraph offices, and were continuously in touch with the office of the chief train dispatcher who was in charge of and was directing the movement of said train No. 17.

IX.

That in connection with the operation on said Coast Lines of the defendant all trains moving there-over between Barstow, California, and Seligman, Arizona, a distance of 318 miles, and between Cadiz, California, and Parker, Arizona, are moved pursuant to the directions of a chief dispatcher upon what is known as the "Arizona Division" with offices at Needles, California, and that all west-bound trains upon reaching Barstow, California, come under the supervision of and are operated by the chief dispatcher of what is known as the "Los Angeles Division" with offices at San Bernardino, California. That the orders and directions of the chief dispatcher of said Los Angeles Division are communicated to trains by certain train dispatchers operating under the direction of said chief dispatcher by whom orders with respect to the movement of trains between Barstow and Los Angeles are communicated by means of telephone or telegraph through the opera-

tors at the various stations to the various trains moving under the direction of said chief dispatcher.
[25]

X.

That the terminals for the passenger train crews engaged in the movement and operation of said trains Nos. 17 and 17 are Los Angeles, California, and Parker, Arizona; that the employees described in said complaint, resided and had their homes in Los Angeles, California, from which point they customarily, and immediately previous to the times mentioned in said complaint, left for Parker, Arizona, in charge of train No. 18, which arrived in Parker at or about 1:15 A. M. on October 2, whereupon said passenger train crew was released from duty until 10:40 o'clock P. M. on October 2, during which time they were not performing any service nor held responsible for the performance of any service should the occasion therefor arise, but during which time they were permitted to enjoy the accommodations for rest and *good with* which they had provided themselves at Parker, which was their "away-from-home-terminal." That customarily, and at or about the times mentioned in said complaint, the passenger train crew in charge of said train No. 17 would reach Los Angeles at or about 10:15 A. M., from which time until 10:30 o'clock P. M. on the following day they were not performing any service nor held responsible for the performance of any service should the occasion therefor arise, but during which times they were permitted to repair to and remain at their respective homes at Los Angeles,

which was their "home" terminal.

XI.

That said train No. 17 mentioned in said complaint, which left Parker, Arizona, at 11:10 P. M. on October 2, 1912, arrived at Barstow, California, at 7:10 o'clock A. M. on October 3d, they having been delayed between Cadiz and Barstow for a period of 2 hours and 30 minutes on account of washouts, [26] the causes of which said delays to said train between Cadiz and Barstow were not known to the defendant, or to any of its officers or agents in charge of said employees, at the time said employees left Parker, and which could not have been foreseen.

XII.

That said train No. 17 mentioned in said complaint was scheduled to leave Barstow at 4:45 o'clock A. M. on October 3, but that by reason of the delay to said train in reaching Barstow it actually left Barstow at 7:45 o'clock A. M. with ample time then remaining to reach Los Angeles within less than 16 hours from the time when said conductor and brakemen entered upon their service, but that at 8:30 o'clock and while said train was being operated between Barstow and San Bernardino, namely, between Bryman and Oro Grande, California, an axle broke under the tank of the engine by which said train was being moved between Barstow and San Bernardino, California, whereby the movement of said train was necessarily and unavoidably delayed for a period of 6 hours 10 minutes, with the result that said train instead of reaching San Bernardino at 7:35 A. M., according to its usual schedule, or at 10:35 A. M., as

it would have done but for the delays in reaching and leaving Barstow, actually arrived at San Bernardino at 5:30 P. M., and that instead of reaching Los Angeles at 10:15 A. M., in accordance with its usual schedule, or at 1:16 P. M., as it would have done but for the delays in reaching and leaving Barstow had there been no further delay, actually reached Los Angeles at 8:25 P. M. on October 3d, said employees having then been on duty for 21 hours 45 minutes, but that the breaking of the axle whereby said train was delayed for a period of 6 hours 10 minutes between Bryman and Oro Grande was a casualty and an unavoidable accident and [27] that the delay to said train caused thereby was the result of causes which were not known to defendant, or to any of its officers or agents in charge of said employees at the time said employees left said terminal of Parker, and which could not have been foreseen.

XIII.

That the said train No. 17 after having been delayed in reaching and leaving Barstow, as hereinbefore described, and after having been delayed for a period of 6 hours 10 minutes by said broken axle, as hereinbefore described, proceeded to the city of Los Angeles in charge of the employees in whose charge said train had left Parker, and that in going to Los Angeles said train and said employees passed through the station of San Bernardino, California, which is a point known and designated as a division terminal and which was a place appointed and

customarily used as a terminal from and to which crews of certain other passenger and freight trains of the defendant brought their trains, but which was not a terminal for the passenger train crews in charge of said trains Nos. 17 and 18 or of any other of defendant's trains operating between said station of Parker and said station of Los Angeles, and at and previous to the time the said employees in charge of said train No. 17 had been continuously on duty for a period of 16 hours, defendant had in its employ at Los Angeles and also San Bernardino passenger train crews which were customarily assigned to other passenger trains and crews which were subject to call which were customarily used in operating freight trains who were qualified should necessity require to operate passenger trains between San Bernardino and Los Angeles. That the employees in charge of said train No. 17 could have been relieved at San Bernardino and said train placed in charge of one of [28] such other freight or passenger train crews at a time which would have permitted the employees in charge of said train No. 17 to deadhead from San Bernardino to Los Angeles, California, on said train No. 17, without performing any service and without being held responsible for the performance of any service in connection with the movement of said train No. 17 should the occasion therefor arise. That the effect of the breaking of the axle upon the tank of the engine which was hauling said train No. 17 was to block the defendant's main line between said stations of Bryman and Oro Grande, which rendered it necessary to send from San Ber-

nardino to the point where said axle broke and where said line was blocked a "wrecking crew," which said crew in addition to the other equipment which it required to open said main line for traffic had with it what is known as a portable telephone, by means of which communication was established between San Bernardino and the point where said line was blocked.

XIV.

That before the delay of 6 hours 10 minutes which resulted from said broken axle had expired, and before the damage which had caused such delay had been repaired, and before the said train left the point where such damage occurred, it was known to the defendant and to its officers and agents in charge of said employees mentioned in said complaint that such employees would have been on duty in excess of 16 hours by the time said employees reached San Bernardino, but that no effort was made to relieve said employees before they had been continuously on duty in excess of 16 hours, either previous to or at the time of their arrival at San Bernardino, or at any time before said employees reached Los Angeles.

[29]

XV.

That it is commonly understood and accepted by railroad men throughout the United States having knowledge of the practical operation of trains that the word "terminal" has reference to certain train or trains or certain crew or crews, and means the beginning or the end of the employee's run or the point at which in the regular course of business he

would go on duty as a member of a particular crew, or at which in the regular course of business he would cease to be a member of such crew of a particular train and be relieved from duty. In other words, the point at which he becomes a member of a train crew in charge of a particular train and the point to which it was intended at the time when he became a member of such crew of such train that he should accompany such train as a member of such crew; and that it is not generally understood among railroad men that the word "terminal" as applied to any particular train or the crew thereof refers to relay or division point between the point at which an employee became a member of the crew and the point to which it was intended that he should accompany the train as such member, although such intermediate relay or division point may have been the point of departure, the end of the run, or the terminal for other crews and other trains.

XVI.

That the failure of this defendant to make any effort to relieve the said employees before they had been continuously on duty for a period in excess of 16 hours or at any time before said employees reached Los Angeles was due to the understanding and belief of the officers and agents in charge of such employees that the delay to said train by reason of said casualties and unavoidable accidents justified [30] the retention in service of said employees until they should have taken said train through to the home terminal of said employees at Los Angeles,

California, and to the belief that the retention in service of said employees in excess of 16 hours was the result of a casualty and unavoidable accident, and that the delay to said train and any excess service on the part of such employees which may have resulted from said delay to said train was the result of causes not known to defendant, or to any of its officers or agents in charge of such employees at the time said employees left their away-from-home terminal at Parker, and which would not have been foreseen.

XVII.

That the railway of defendant is customarily and at the times mentioned in the complaint was a well-managed railway, operated in accordance with the best known custom and usage prevailing among well-operated railways throughout the United States, and that said defendant considered it desirable and in accordance with custom and usage prevailing upon defendant's and other well-operated railroads, from the point of view both of said railway and of its employees in question, that they should be permitted at the earliest opportunity to reach their home terminal at Los Angeles where they might rest at their respective homes before being again required to go on duty.

XVIII.

That under date of March 16, 1908, the Interstate Commerce Commission made and promulgated an administrative ruling construing the hours of service act (34 St. L. 1415) in words and figures as follows:
[31]

(i) Sec. 3. The instances in which the act will not apply include only such occurrences as could not be guarded against those which involved no neglect or lack of precaution on the part of the carrier, its agents, or officers; and they serve to waive the application of the law to employees on trains only until such employees, so delayed, reach a terminal or relay point. (See Rule 88) "Casualty," like its synonyms "accident" and "misfortune," may proceed or result from negligence or other cause known or unknown. (Words and Phrases Judicially Defined, vo. 1, 1003.)

Act of God. Any accident due to natural causes directly and exclusively without human intervention, such as could not have been prevented by any amount of foresight, and pains, and care reasonable to have been expected. (Bouvier's Law Dictionary, vol. 1, 79.)

That under date of May 5, 1908, the Interstate Commerce Commission made and promulgated an administrative ruling construing the hours of service act (34 St. L. 1415) in words and figures as follows:

74. HOURS-OF-SERVICE LAW.—Employees deadheading on passenger trains or on freight trains and not required to perform, and not held responsible for the performance of any service or duty in connection with the movement of the train upon which they are deadheading, are not while so deadheading "on duty" as that phrase is used in the act regulating the hours of labor. (See Rule 287-b.)

That under date of May 25, 1908, the Interstate Commerce Commission made and promulgated an administrative ruling construing the hours of service act (34 St. L. 1415), in words and figures as follows:

(b) Section 3 of the law provides that: "The provisions of this act shall not apply in any case of casualty or unavoidable accident or the act of God; nor where *the delay* was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal, and which could not have been foreseen."

Any employee so delayed may therefore continue on duty to the terminal or end of that run. The proviso quoted removes the application of the law to that trip. (See Rule 287.)

XIX.

That in its annual report to Congress dated December 24, 1908, the Interstate Commerce Commission, in referring to the hours of service law, said:
[32]

THE HOURS OF SERVICE LAW.

"The federal hours of service act was approved March 4, 1907, to become effective one year from the date of its enactment. . . .

The law became effective on the 4th of March, 1908. . . .

Questions immediately arose as to its proper interpretation. With a view to explaining, in so far as possible, those features of the act which might be claimed to be ambiguous, the Commission issued the following administrative rulings:

Section 1.

The law is applicable to every common carrier subject to the act to regulate commerce and to every employee concerned in the physical operation of such company's trains.

Section 2.

The requirement for ten consecutive hours off duty applies only to such employees as have been on duty for sixteen consecutive hours.

The requirement for eight consecutive hours off duty applies only to employees who have not been on duty sixteen hours, but have been on duty sixteen hours in the aggregate of a twenty-four hour period.

A telegraph or telephone operator who is employed in a night and day office may not be required to perform duty in any capacity or of any kind beyond nine hours of total service in any twenty-four hour period.

A twenty-four hour period begins when the employee goes on duty after an interim of not less than eight consecutive hours off duty.

Time 'on duty' includes the entire period of service or responsibility therefor.

A 'week' means a calendar week, beginning with Sunday.

Section 3.

The exemptions prescribed by this section contemplate only such accidents as could not by the exercise of diligence on the part of the carriers, their agents, or officers, have been anticipated and prevented.

Employees performing excess service are not liable to the penalties provided by the act.

Employees unavoidable delayed by reason of causes that could not, at the commencement of a trip have been foreseen, may lawfully continue on duty to the terminal or end of that run.

. . . . It is understood and so maintained by the Commission, that Congress in using this expression intended to confer for the enforcement of the hours of service law each and every power heretofore granted to the Commission; that inasmuch as the act to regulate commerce empowers the Commission, in the administration of that law, to require reports under oath, a similar authority may lawfully be exercised by the Commission in the execution of the hours of service law.

Another criticism in regard to the act under consideration has reference to section 3 thereof, that—

The provisions of this act shall not apply in any case of casualty or unavoidable accident, or the act of God. [33]

Presuming upon these exceptions, carriers have endeavored to explain their failures to comply with the law by a variety of reasons which, in the opinion of the Commission are not emergencies such as were contemplated by Congress in the drafting of the statute. Among these excuses may be mentioned 'leaky valves,' 'hot boxes,' 'drawheads pulled out'; 'engine failures'

from various causes not explained, 'broken air hose,' etc., some of which have resulted in detaining men on duty for continuous periods of more than forty-one hours.

It is respectfully suggested that the law in this particular should, so far as possible, be made specific, so as to restrict the exercise on the part of carriers of discretion in determining whether or not a given incident is a 'casualty' or 'unavoidable accident' within the meaning of the act; or that some one should be designated and empowered to decide all such questions.

While the commission is practically convinced that the act in its present form confers upon it all the power necessary to effect the objects for which it was adopted, still its terms are susceptible of more than *one* interpretation. Hence controversies must necessarily arise and while such questions can, of course, after the usual period of litigation be judicially determined, their settlement by such means will entail a large expense upon the Government, as well as considerable delay in attaining the full measure of benefit which the law should reasonably afford. It is therefore desirable that Congress should, by a few lines of explanation, so clarify the situation as authoritatively to settle most of the questions that may arise."

XX.

That the above-entitled cause may be and it is hereby submitted to the Court for decision, a jury trial of the above-entitled cause being hereby ex-

pressly waived by both parties, upon the foregoing agreed statement of facts, subject to the right of either party to have any decision rendered by the above court upon such agreed statement of facts reviewed by the Circuit Court of Appeals or by the Supreme Court of the United States as fully and to the same extent as though said cause had been tried to a jury.

Dated at Los Angeles, California, June 17th, 1914.

ALBERT SCHOONOVER,

United States Attorney,

HARRY R. ARCHBALD,

Asst. United States Attorney,

MONROE C. LIST,

Special Assistant to U. S. Attorney,

Attorneys for Plaintiff. [34]

E. W. CAMP,

U. T. CLOTFELTER,

PAUL BURKS,

Attorneys for Defendant. [35]

Exhibit "A."

Showing schedule running time and actual running time of train No. 17
on October 2d, 3d, 1912; distance between principal stations
through which said train passed between Parker and
Los Angeles; distance of each of said stations
from Parker and time employees in charge
of said train had been on duty at
the time of their departure
from said stations.

Stations.	Distance from Parker	Schedule Time.	Actual Running Time.	Time on Duty.
Lv. Parker		11:10 pm.	11:10 pm.	30"
84.6				
Ar. Cadiz	84.6	1:35 am.	1:35 am.	2' 55"
Lv. Cadiz	84.6	1:40 am.	1:40 am.	3' 00"
98.9				
Ar. Barstow	183.5	4:40 am.	7:10 am.	8' 30"
Lv. Barstow		4:45 am.	7:45 am.	9' 05"
11.8				
Cottonwood	195.3	5:05 am.	8:06 am.	9' 26"
14.2				
Bryman	209.5	5:28 am.	8:17 am.	9' 37"
5.4				
Oro Grande	214.9	5:28 am.	3:23 pm.	16' 43"
5.3				
Victorville	220.2	5:50 am.	3:36 pm.	16' 56"
8.4				
Hesperia	228.6	6:10 am.	3:56 pm.	17' 16"
10.8				
Summit	239.4	6:43 am.	4:21 pm.	17' 41"
15.0				
Devore	254.4	7:15 am.	5:10 pm.	18' 30"
10.2				
Ar. San Ber-				
nardino	264.6	7:35 am.	5:30 pm.	18' 50"
Lv. " "		8:00 am.	5:56 pm.	19' 16"
9.9				
Riverside	274.5	8:20 am.	6:30 pm.	19' 50"
60.8				
Ar. Los Angeles	335.3	10:15 am.	8:25 pm.	21' 45"

Note:—The figures shown between stations indicate the miles between such stations. [36]

36 *The Atchison, Topeka & Santa Fe Ry. Co.*

There was no further or additional testimony introduced at the trial.

The cause was then argued and submitted to the Court, and judgment ordered for plaintiff, to which order defendant duly excepted.

Thereafter the Court made and filed Findings of Fact and Conclusions of Law in words and figures as follows:

“In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 244—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

Defendant.

Findings of Fact and Conclusions of Law.

This cause came on regularly for trial on the 17th day of June, 1914, was tried before the Court without a jury, a trial by jury having been expressly waived by a stipulation in writing, signed by the attorneys for both parties hereto and filed with the Clerk of this court, said parties having agreed and stipulated as to the facts upon which said trial are admitted to be true, and as to which no proof thereof need to be introduced, and the Court finds as facts all the matters set out in paragraphs I, II, III, *IC*, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII and XIX of said stipulation as

to facts, filed herein, which said paragraphs are expressly referred to and made a part of these findings of fact.

As conclusions of law, from the foregoing findings [37] the Court finds that the act of the defendant railroad company in requiring and permitting said C. D. Plank, conductor, and C. L. Elmendorf and W. F. Rossow, brakemen, to continue on said run to the City of Los Angeles, in the State of California, was a violation of the provisions of the Hours of Service Act, approved March 4, 1907, and that plaintiff is entitled to a judgment against said defendant by reason thereof, on each cause of action set forth in said complaint, together with costs of plaintiff incurred herein; that a penalty of \$100.00 be, and it is, hereby assessed on each of said causes of action.

It is ordered that judgment be entered in accordance herewith.

Done in open court this 20th day of June, 1914.

OLIN WELLBORN,
District Judge."

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled action that the foregoing Bill of Exceptions contains all the evidence offered and received at the trial of the said cause, and all proceedings at the trial thereof, and full, true and correct copies of the agreed statement of facts upon which said cause was submitted for decision, and the findings of fact and conclusions of law, together with the substance of the

orders made by the Court; and the said Bill of Exceptions may be settled, allowed and filed.

MONROE C. LIST,
HARRY R. ARCHBALD,
ALBERT SCHOONOVER,
Attorneys for Plaintiff.

E. W. CAMP,
U. T. CLOTFELTER,
PAUL BURKS,
Attorneys for Defendant. [38]

Pursuant to the foregoing stipulation, this Bill of Exceptions is hereby approved, allowed, and the same is ordered filed.

Dated July 17th, 1914.

OLIN WELLBORN,
District Judge.

[Endorsed]: No. 244—Civil. Original. Dept. ——. In the District Court of the United States, Sou. Dist. of Cal., Sou. Divn. United States of America, Plaintiff, vs. The Atchison, Topeka and Santa Fe Railway Co., Defendant. Bill of Exceptions. Filed Jul. 17, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. E. W. Camp, A. H. Van Cott, U. T. Clotfelter, M. W. Reed, Paul Burks, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for ————. [39]

*'In the District Court of the United States of
America, Southern District of California,
Southern Division.*

No. 244—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

Defendant.

Assignment of Errors.

Comes now The Atchison, Topeka and Santa Fe Railway Company, defendant in the above-entitled cause, and files the following Assignment of Errors upon which it will rely in its prosecution of a Writ of Error in the above-entitled cause, petition for which said writ of error to review the judgment of this Honorable Court made and entered in said cause on the 22d day of June, 1914, it files at the same time with this Assignment.

ASSIGNMENT I.

That the United States District Court for the Southern District of California, Southern Division, erred in denying defendant's motion for a judgment in its favor and against the plaintiff, made by it at the time when this cause was submitted to said Court for its decision upon the pleadings and upon the agreed statement of facts filed in the above cause, for the reason that it affirmatively appears from said agreed statement of facts that the retention in service during the period mentioned in plaintiff's com-

plaint of the employees therein mentioned was not in violation of the Act of Congress entitled "An Act [40] to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, (34 St. L. 1415) because,—

(a) The delay to which were subjected the train and the employees in charge of the train mentioned in said complaint was the result of a cause not known to defendant or any officer or agent in charge of such employees at the time when said employees left a terminal and which could not have been foreseen; and

(b) That the retention in service during the time mentioned in said complaint of each of the employees therein named was the result of a casualty and of an unavoidable accident, by reason whereof the said Act of Congress did not apply to the retention in service of such employees in excess of sixteen hours, under the circumstances as set forth in said agreed statement of facts; and

(c) That the retention in service of said employees under the circumstances shown by said agreed statement of facts in excess of sixteen hours was expressly authorized by said Act of Congress and that said Act of Congress did not prohibit—but, on the contrary, expressly authorized—such service, under the circumstances as shown by said agreed statement of facts.

ASSIGNMENT II.

That said Court erred in finding that the act of the defendant in requiring and permitting conductor

C. D. Plank and brakemen C. L. Elmendorf and W. F. Rossow to continue on their run to the city of Los Angeles, in the State of California, was a violation of the provisions of the hours of service act (approved March 4, 1907; 34 St. L. 1415), for the [41] reason (1) that the train of which said conductor and brakemen were in charge had, after starting on its run, been delayed by reason of a casualty and an unavoidable accident, and (2) that the delay to which said train and said employees were subjected was the result of a cause not known to defendant, or to any of its officers or agents in charge of such employees, at the time such employees left a terminal and which could not have been foreseen.

ASSIGNMENT III.

That the Court erred in finding that plaintiff was entitled to a judgment against the defendant on each cause of action set forth in plaintiff's complaint, together with costs of plaintiff incurred in said action, and in assessing a penalty of \$100.00 against the defendant on each of said causes of action, for the reason that, as fully appears from the agreed statement of facts upon which said cause was submitted to the Court for its decision, the service of said employees, as alleged in said complaint, was not in violation of the Act of Congress entitled, "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (34 St. L. 1415), and that said Act did not prohibit—but, on the contrary, expressly authorized—said service, un-

der the circumstances shown by such agreed statement of facts.

ASSIGNMENT IV.

That the judgment made, rendered and entered in the above cause is contrary to the evidence contained in the agreed statement of facts upon which said cause was submitted to the Court for decision in this, that it affirmatively [42] appears from said agreed statement of facts that the retention in service of the employees therein and in plaintiff's complaint mentioned, during the time therein and in said complaint mentioned, was not in violation of the Act of Congress known as the hours of service act, and such Act of Congress did not apply to or prohibit—but, on the contrary, expressly authorized—such service of such employees, under circumstances as shown and set forth in said agreed statement of facts.

ASSIGNMENT V.

That the judgment made, rendered and entered in the above cause is contrary to law, because:

(a) The delay to which the train mentioned in plaintiff's complaint and the employees mentioned in said complaint who were in charge of said train were subjected was the result of a cause not known to defendant or any officer or agent in charge of such employees at the time when said employees left a terminal and which could not have been foreseen; and

(b) That the retention in service during the time mentioned in said complaint of each of the employees therein mentioned was the result of a casualty and of an unavoidable accident, by reason whereof the

said Act of Congress did not apply to the retention in service of said employees in excess of sixteen hours, under the circumstances as shown by said agreed statement of facts; and

(c) That under and by virtue of the terms of the proviso in sec. 3 of the said Act of Congress entitled "An Act to promote the safety of employees and travelers upon [43] railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (34 St. L. 1415), set forth and contained, the retention in service during the time in said complaint mentioned of the employees therein named and for such period in excess of sixteen hours as would enable said employees to complete their run to Los Angeles, under the circumstances which are shown by said agreed statement of facts to have caused such service, was expressly authorized, and the said Act of Congress did not apply to and did not prohibit the said service of said employees.

And upon the foregoing Assignment of Errors and upon the record in said cause, the defendant prays that said judgment may be reversed.

E. W. CAMP,
PAUL BURKS,

Attorneys for Defendant.

[Endorsed]: No. 244—Civil. Original. Dept. ——. District Court of the United States, Sou. Dist. of Cal., Sou. Divn. United States of America, Plaintiff, vs. The Atchison, Topeka and Santa Fe Railway Co., Defendant. Assignment of Errors. Filed Jul. 24, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Received copy of the

44 *The Atchison, Topeka & Santa Fe Ry. Co.*

within assignment of errors this 24th day of July, 1914. Albert Schoonover, Attorney for Plaintiff. E. W. Camp, Paul Burks, Attorneys for Defendant. [44]

In the District Court of the United States of America, Southern District of California, Southern Division.

No. 244—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

Defendant.

Petition for Writ of Error and Supersedeas.

The Atchison, Topeka and Santa Fe Railway Company, a corporation, defendant in the above-entitled cause, feeling itself aggrieved by the judgment of the Court entered on June 22d, 1914, comes now by Paul Burks, its attorney, and files herewith an Assignment of Errors, and petitions said Court for an order allowing said defendant to procure a Writ of Error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until

the termination of said Writ of Error by the said United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray, etc.

Dated July 18, 1914.

E. W. CAMP,

PAUL BURKS,

Attorneys for Defendant. [45]

[Endorsed]: No. 244—Civil. Original. Dept. ——. In the District Court of the United States, Sou. Dist. of Cal., Sou. Divn. United States of America, Plaintiff, vs. The Atchison, Topeka and Santa Fe Railway Co., Defendant. Petition for Writ of Error and Supersedeas. Filed Jul. 24, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Received copy of the within petition this 24th day of July, 1914. Albert Schoonover, Attorney for plaintiff. E. W. Camp, Paul Burks, 409 Kerekhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant. [46]

In the District Court of the United States of America, Southern District of California, Southern Division.

No. 244—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILROAD COMPANY,

Defendant,

Order Allowing Writ of Error.

Upon motion of E. W. Camp and Paul Burks, attorneys for defendant, and upon filing a petition for a writ of error and an assignment of errors,—

IT IS ORDERED that a writ of error be and the same hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the verdict and judgment heretofore entered herein.

Dated July 24th, 1914.

OLIN WELLBORN,
District Judge.

[Endorsed]: Original. No. 244—Civil. Dept.—. In the District Court of the United States, Sou. Dist. of Cal., Sou. Divn. United States of America, Plaintiff, vs. The At. & S. F. Ry. Co., Defendant. Order Allowing Writ of Error. Filed Jul. 24, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. E. W. Camp, Paul Burks, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant. [47]

In the District Court of the United States of America, Southern District of California, Southern Division.

No. 244—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

Defendant.

Order Staying Proceedings.

The defendant, The Atchison, Topeka and Santa Fe Railway Company, having on the 17th day of July, 1914, filed its petition for a writ of error from the verdict and judgment made and entered herein to the United States Circuit Court of Appeals for the Ninth Circuit, together with an assignment of errors within due time, and also praying that an order be made fixing the amount of the security which the defendant should give and furnish upon said writ of error, and that upon the giving of said security all further proceedings of this court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals, and said petition having been duly allowed, now, therefore,

IT IS ORDERED that upon said defendant filing with the clerk of this court a good and sufficient bond in the sum of Five Hundred Dollars (\$500.00), to the effect that if the said defendant and plaintiff in error shall prosecute the said writ of error with effect and answer all damages and costs if it fails to make its plea good, then the said obligation to be void, else to remain in full force and [48] virtue, the said bond to be approved by this Court, that all further proceedings in this court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals.

Dated July 24th, 1914.

OLIN WELLBORN,
District Judge.

[Endorsed]: Original. No. 244—Civil. Dept.—. In the District Court of the United States, Sou. Dist. of Cal., Sou. Divn. United States of America, Plaintiff, vs. the At. & S. F. Ry. Co., Defendant. Order Staying Proceedings. Filed Jul. 24, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. E. W. Camp, Paul Burks, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant. [49]

*In the District Court of the United States of
America, Southern District of California,
Southern Division.*

No. 244—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

Defendant.

Bond.

KNOW ALL MEN BY THESE PRESENTS:
That we, The Atchison, Topeka and Santa Fe Rail-
way Company, a corporation, as principal, and Na-
tional Surety Company, as surety, are held and
firmly bound unto United States of America, the
plaintiff above named, in the sum of Five Hundred
Dollars (\$500.00), to be paid to said United States
of America, to which payment, well and truly to be
made, we bind ourselves, jointly and severally, and

our and each of our successors and assigns, firmly by these presents.

Sealed with our seals, and dated, this 18th day of July, A. D. 1914.

WHEREAS, the above-named defendant, The Atchison, Topeka and Santa Fe Railway Company, has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled cause by the District Court of the United States of America, Southern District of California, Southern Division, rendered and entered in said cause on the 22d day of June, 1914.

NOW, THEREFORE, the condition of this obligation is such that if the above-named, The Atchison, Topeka and [50] Santa Fe Railway Company shall prosecute said writ to effect, and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

THE ATCHISON, TOPEKA AND SANTA
FE RAILWAY COMPANY,

[Seal]

By A. G. WELLS,
Its General Manager.

Attest: G. HOLTERHOFF, Jr.,
Western Asst. Secretary.

NATIONAL SURETY COMPANY,

[Seal]

By CHAS. SEYLER, Sr.,
Its Resident Vice-president.

H. EVERETT CHARLTON,
Resident Assistant Secretary. [51]

AFFIDAVIT, ACKNOWLEDGMENT, AND
JUSTIFICATION BY GUARANTEE OR
SURETY COMPANY.

State of California,
County of Los Angeles,—ss.

On this 21st day of July, one thousand nine hundred and fourteen, before me personally came Chas. Seyler, Sr., known to me to be the Resident Vice-president of the National Surety Company, the corporation described in and which executed the within and foregoing Bond of Atchison, Topeka & Santa Fe Railway Co. as a surety thereon, and who, being by me duly sworn, did depose and say that he resides in the city of Los Angeles, State of California; that he is the Resident Vice-president of said Company and knows the corporate seal thereof; that the said National Surety Company is duly and legally incorporated under the laws of the State of New York; that said Company has complied with the provisions of the Act of Congress of August 13th, 1894; that the seal affixed to the within Bond of Atchison, Topeka & Santa Fe Railway Co. is the corporate seal of said National Surety Company, and was thereto affixed by order and authority of the Board of Directors of said Company, and that he signed his name thereto by like order and authority as Resident Vice-president of said Company, and that he is acquainted with H. Everett Charlton and knows him to be the Resident Assistant Secretary of said Company; and that the signature of said H. Everett Charlton subscribed to said Bond is in the genuine handwriting of said H. Everett Charlton, and was thereto sub-

scribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unencumbered and liable to execution exceed its debts and liabilities of every nature whatsoever, by more than the sum of one thousand (\$1000) dollars.

That Frank L. Gilbert is our agent to acknowledge service in the Judicial District wherein this bond is given.

CHAS. SEYLER, Sr.

(Deponent's Signature.) [52]

Sworn to, acknowledged before me, and subscribed in my presence this 21st day of July, 1914.

[Seal]

HAZEL JONES,

(Officer's signature, description and seal.)

Notary Public in and for the County of Los Angeles,
State of California.

The foregoing bond is approved as to form, amount, and sufficiency of surety.

ALBERT SCHOONOVER,

U. S. Atty.

[Endorsed]: Original. No. 244—Civil. Dept. ——. In the District Court of the United States, Sou. Dist. of Cal., Sou. Divn. United States of America, Plaintiff, vs. The At. & S. F. Ry. Co., Defendant. Bond. The foregoing Bond is hereby approved. Olin Wellborn, Judge. Filed Jul. 24, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. E. W. Camp, Paul Burks, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant. [53]

*In the District Court of the United States of
America, Southern District of California,
Southern Division.*

No. 244—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

Defendant.

Praeceptum [for Transcript of Record].

To the Clerk of the Above Court:

Sir: Please issue a certified copy of the record in the above-entitled cause, consisting of the papers following:

1. Complaint.

2. Answer.

3. Judgment.

4. Bill of Exceptions (in which there is included the Stipulation as to Facts upon which said cause was submitted, and the Findings of Fact and Conclusions of Law).

5. Petition for Writ of Error. .

6. Assignment of Errors.

7. Writ of Error.

8. Order Allowing Writ of Error.

9. Citation in Error.

Said record to be certified under the hand of the Clerk and the seal of the above Court.

PAUL BURKS,

Attorney for Defendant. [54]

Receipt of a copy of the foregoing praecipe (in which there is set forth all papers necessary to a determination by the Circuit Court of Appeals of the Writ of Error prosecuted by the defendant) is hereby admitted this —— day of July, 1914.

MONROE C. LIST,
HARRY R. ARCHBALD,
ALBERT SCHOONOVER,

Attorneys for Plaintiff.

[Endorsed]: No. 244—Civil. Original. In the District Court of the United States, Sou. Dist. of Cal., Sou. Divn. United States of America, Plaintiff, vs. The At. and S. F. Railway Company, Defendant. Praecipe. Filed Jul. 24, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. E. W. Camp, Paul Burks, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant. [55]

54 *The Atchison, Topeka & Santa Fe Ry. Co.*

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. 244—CIVIL.

THE UNITED STATES OF AMERICA,
Plaintiffs,
vs.

THE ATCHISON, TOPEKA & SANTA FE RAIL-
WAY COMPANY, A Corporation,
Defendant.

I, WM. M. VAN DYKE, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing fifty-five (55) typewritten pages, numbered from 1 to 55, inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Complaint, Answer, Judgment, Bill of Exceptions, Assignment of Errors, Petition for Writ of Error, Order Allowing Writ of Error, Order Staying Proceedings, Bond on Writ of Error and Praecipe for Transcript in the above and therein-entitled cause, and that the same together constitute the record in said cause as specified in the said Praecipe filed in my office on behalf of the plaintiff in error by its attorney of record.

I do further certify that the cost of the foregoing record is \$25.85, the amount whereof has been paid me by The Atchison, Topeka & Santa Fe Railway Company, the plaintiff [56] in error in said cause

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 17th day of August, in the year of our Lord one thousand nine hundred and fourteen, and of our Independence the one hundred and thirty-ninth.

[Seal]

WM. M. VAN DYKE,

Clerk of the District Court of the United States of America in and for the Southern District of California. [57]

[Endorsed]: No. 2466. United States Circuit Court of Appeals for the Ninth Circuit. The Atchison, Topeka & Santa Fe Railway Company, a Corporation, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Southern District of California, Southern Division.

Received and filed August 21, 1914.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

